Kenya Women Microfinance Bank PLC v Katumo (Civil Case 179 of 2019) [2026] KEMC 62 (KLR) (10 March 2026) (Judgment)

Neutral citation: [2026] KEMC 62 (KLR)

REPUBLIC OF KENYA

IN THE MAKINDU LAW COURTS

CIVIL CASE 179 OF 2019

YA SHIKANDA, SRM

MARCH 10, 2026

BETWEEN

KENYA WOMEN MICROFINANCE BANK PLC ..... PLAINTIFF

AND

KENNEDY SILA KATUMO ..... DEFENDANT

JUDGMENT

1. Kenya Women Microfinance Bank PLC (hereinafter referred to as the plaintiff) filed this suit on 28/6/2019 vide a plaint dated 27/6/2019. The plaintiff sued Kennedy Sila Katumo (hereinafter referred to as the defendant) on account of a loan agreement. The plaintiff averred that at all material times, there existed a Banker-Customer relationship between the plaintiff and the defendant. That pursuant to a facility letter dated 18/8/2015, the plaintiff advanced to the defendant the sum of Ksh. 4,870,960/= for purposes of purchasing motor vehicle registration number KCD 880R Mitsubishi Lorry. The plaintiff further averred that the defendant secured the loan facility and the asset but breached the terms of the agreement by failing to repay the amounts due.

2. That in exercise of its right to sale, the plaintiff put up the motor vehicle for sale and the same was sold by auction on 7/9/2016 for a sum of Ksh. 3.000,000/=. The plaintiff averred that as at 22/9/2016, the outstanding loan amount was Ksh. 1,960,376.88/=, which continued to accrue interest. The plaintiff thus prays for judgment against the defendant as follows:

    a. Ksh. 1,960,376.88/=;

    b. Interest until payment in full.

Defendant's Defence And Counter-claim

5. The defendant entered appearance on 5/11/2019 and filed a statement of defence and counter-claim on 8/1/2021. The defendant averred that it was his wife who was the plaintiff's customer and that the

loan amount was advanced through the defendant's wife. That the defendant signed as a guarantor and that he did not breach any terms of the agreement. The defendant further averred that as a result of the loan facility advanced, he made periodic payments as and when due until when the plaintiff illegally and unlawfully repossessed the motor vehicle without any notice and/or justified reason. That the defendant was not notified of any public auction nor given any documents in support of the alleged sale of the motor vehicle.

6. The defendant averred that before the repossession of the motor vehicle, he had paid a sum of Ksh. 1,986,100/= and that if the amount is added to the sum of Ksh. 3,000,000/= realised from the sale of the motor vehicle, the total amount is over and above the loan amount. That as such, there is no outstanding balance as alleged by the plaintiff. The defendant denied being indebted to the plaintiff. In his counter-claim, the defendant averred that the repossession of the motor vehicle was illegal and unlawful. He pleaded the following particulars of illegality and breach of the terms of the loan facility:

    a. No notice of repossession of the said motor vehicle;

    b. No notice and/or involvement of the sale of the said motor vehicle by public auction;

    c. Non-disclosure of true accounts of the loan amount and the repayments thereof.

10. The defendant prayed that the plaintiff's suit be dismissed with costs and that judgment be entered in his favour for:

    a. General damages for unlawful and illegal repossession of motor vehicle registration number KCD 880R Mitsubishi Lorry FH;

    b. An order to render a true account by the plaintiff and a refund of the surplus amount paid herein by the defendant after subtracting the total payments and sale proceeds of the motor vehicle herein from the loan amount advanced;

    c. Costs of the suit.

Defence To Counter-claim

14. The plaintiff filed a reply to defence and defence to the counter-claim. The plaintiff averred that the repossession of the motor vehicle was well within the law and in compliance with the terms of the facility agreement as executed by the parties. The plaintiff denied the particulars of breach pleaded in the counter-claim and prayed that the counter-claim be dismissed.

The Evidence

The Plaintiff's Case

15. The plaintiff called one witness in support of its case. PW 1 Beatrice Wandia adopted her statement as part of her testimony. Her testimony was that she was the finance, credit and administration manager of the plaintiff. That following an application by the defendant, a sum of Ksh. 4,870,960/= was advanced by the plaintiff to the defendant for purposes of purchasing motor vehicle registration number KCD 880R. The witness stated that the defendant failed to pay the loan amounts whereupon the motor vehicle was repossessed and sold at a sum of Ksh. 3,000,000/=. That the outstanding amount due and owing from the defendant stood at KSH. 1,960,376.88/= as at 22/9/2018. The witness stated that the defendant paid a sum of Ksh. 1,236,100/= only. At another point, the witness stated that the defendant paid a sum of Ksh. 1,219, 366/=. The witness produced several documents in support of the plaintiff's case. The Defence Case

16. Only the defendant testified in support of his defence. The defendant also adopted his statement filed in court as part of his testimony in-chief. The defendant admitted that he took a loan facility from the plaintiff for the sum alleged by the plaintiff. He further admitted that he defaulted in the loan repayments and visited the plaintiff's offices for a discussion but was ignored. It was the evidence of the defendant that no notice was given to him before the motor vehicle was repossessed. That other than repossession of the motor vehicle, the defendant's shop goods were also taken by the plaintiff. The defendant produced documents in support of his case.

Facts Not In Dispute

The following facts are not in dispute:

a. The plaintiff and the defendant entered into a loan agreement for the purchase of motor vehicle registration number KCD 880R;

b. The loan advanced to the defendant was in the sum of Ksh. 4,870,960/=;

c. The defendant did not repay the loan in full;

d. The defendant repaid part of the loan amount advanced;

SUBPARA e.

The motor vehicle aforesaid was repossessed by the plaintiff.

Main Issues For Determination

17. Given the admitted facts, I find that the main issues for determination are as follows:

i. Whether the defendant owes the plaintiff the sum of Ksh. 1,960,376.88/= or at all;

ii. Whether the repossession of the motor vehicle by the plaintiff was unlawful;

iii. Whether the defendant is entitled to general damages as against the plaintiff;

iv. Whether the plaintiff owes the defendant any money;

v. Whether the plaintiff should be compelled to render an account of the money received on account of the loan agreement;

vi. Who should bear the costs of the suit?

The Plaintiff's Submissions

18. The plaintiff filed written submissions in support of its case. The plaintiff submitted that it had proven its case against the defendant on a balance of probabilities. That the defendant breached the terms of the loan agreement by failing to pay the amounts due as agreed. The plaintiff relied on its evidence as well as the Mpesa statement produced by the defendant and contended that the defendant paid Ksh. 1,218,366/= only. The plaintiff submitted that the defendant's counter-claim was vague and did not disclose the facts from which the cause of action arose. The plaintiff argued that it was not required to issue a notice before repossessing the motor vehicle as per the Chattels mortgage agreement that was signed by the parties. That the parties were bound by the terms of their contract.

19. It was submitted that the defendant did not plead fraud, coercion or undue influence at the time of signing the contract. That ignorance of contractual terms or legal requirements is not an excuse for non-performance of a contract. The plaintiff argued that it was not a legal requirement that the

defendant be involved in the sale of the motor vehicle. That even after repossession, the defendant did not take any steps to redeem the motor vehicle. The plaintiff submitted that the sale was advertised and the defendant was at liberty to attend the auction. The plaintiff argued that it was not obliged to disclose the account statement and that the defendant was at liberty to apply for the same but did not do so. That nonetheless, the plaintiff filed a comprehensive loan account statement and served the same upon the defendant who did not contest any of the entries in the statement.

20. The plaintiff submitted that the document relied upon by the defendant on the allegation that his stock was taken by the agents of the plaintiff is unreliable. That there is nothing to show that the defendant had stock and that the same was taken. There is also no evidence to show that whoever took the alleged stock were agents of the plaintiff. The plaintiff contended that the defendant had failed to prove his claim. It urged the court to dismiss the counter-claim. The plaintiff relied on the following authorities:

    a. Amicabre Travel Services Limited v Alios Kenya Finance Limited [2014] KEHC 4671 (KLR);

    b. Co-operative Bank of Kenya Limited v Amasi (Suing as the Administratratix of the Estate of Dorcas Amasi Mwima) [2024] KEHC 12691 (KLR).

Submissions On Behalf Of The Defendant

21. The defendant also filed written submissions. The defendant submitted that the plaintiff did not produce a true account, ledger reconciliation, valuation report prior to the sale, pre-sale inventory and/or credible ledger showing how the balance claimed by the plaintiff was arrived at. That the plaintiff had not proven its case on a balance of probabilities. The defendant argued that the right to repossess must be exercised in accordance with contract, statute and procedural fairness. That no notice was served upon the defendant before the motor vehicle was repossessed. The defendant contended that the repossession was unlawful for want of compliance with both statutory requirements and fair administration of justice. That the plaintiff cannot rely on the strict terms of the contract to override statutory safeguards and fairness especially where such enforcement inflicts irreparable deprivation of property and business.

22. The defendant argued that the sale was done contrary to the *Auctioneers Act* and the Rules. That no newspaper advertisement, valuation report, post-sale inventory, bidder list, or sale certificate were produced nor was there any independent verification or licensed auctioneer's contemporaneous evidence. The defendant submitted that the purported sale was procedurally flawed and invalid as it did not effect a lawful transfer of title or realize a valid deficiency claim. The defendant further submitted that he had paid a sum of Ksh. 1,986,100/=. That if the sum of Ksh. 3,000,000/= is added to the previous payment, the total is Ksh. 4,986,100/=, which exceeds the Principal Loan/ Hire-Purchase amount of Ksh. 4,870,960/=. The defendant urged the court to order for a refund of the surplus. The defendant urged the court to dismiss the plaintiff's suit and enter judgment as per the counter-claim plus costs. He relied on the authority of Barasa v Momentum Credit Limited [2025] KEHC 5233 (KLR).

Analysis And Determination

23. I have carefully considered the claims as well as the evidence on record. I have further considered the submissions by the parties as well as the applicable law. As already indicated, most of the facts are not in dispute. The first thing to determine is whether the defendant owes the plaintiff. I must deprecate the manner in which the plaintiff prosecuted its case. The plaintiff merely dumped documents to the court and left the court to do the analysis and audit. There is absolutely no meaningful explanation from the plaintiff's witness on how the amount claimed was arrived at. The plaintiff's witness testified that at

the time of repossession of the motor vehicle, the defendant had repaid a sum of Ksh. 1,236,100/= or Ksh. 1,219,366/=. The witness appears not to have been sure of how much the defendant had paid.

24. The plaintiff's witness further testified that as at the time of repossession, the outstanding loan balance was Ksh. 4,083,011/=. The witness did not clearly state what the total loan amount payable was but going by her contradictory evidence, it could have been either Ksh. 5,319,111/= or Ksh. 5,302,377/=. The plaintiff produced in evidence a copy of the Facility letter dated 23/4/2015. This is akin to a letter of offer. The same appears to have been signed by the defendant and the plaintiff's representative. Clause 2.1 of the facility letter provides that the plaintiff was to be provided with the following securities:

    a. A chattel mortgage executed by the defendant over his personal assets; and

    b. The deposits and savings held by the bank on the account of the borrower.

25. Clause 2.3 of the facility letter provides that in the event there is a conflict between the facility letter and the security, the provisions contained in the security shall prevail. The plaintiff produced in evidence a copy of the Chattels mortgage agreement dated 18/8/2015. The same appears to be incomplete as page six is missing. Judging from the contents of the agreement, I suspect page six is where the signatures of the parties ought to be. However, the defendant admitted in evidence that he signed a loan agreement and was duly informed of the terms thereof.

26. Nevertheless, the plaintiff produced in evidence a copy of the defendant's loan statement. The statement indicates that as at 22/9/2016, the loan balance due and owing from the defendant was Ksh. 1,960,376.88/=. It is not in dispute that as at the time of repossession of the motor vehicle, the defendant was in default. According to the defendant, he had paid a sum of Ksh. 1,986,100/=. In my view, payments must be proven by documentary evidence and not just by word of mouth. The plaintiff acknowledges that the defendant had made some payments before the motor vehicle was repossessed. However, there is disagreement as to how much the defendant had paid. As already indicated, the plaintiff's witness was not clear on how much the defendant had paid.

27. Counsel for the defendant cross-examined the plaintiff's witness at length but did not specifically interrogate the witness on the loan statement. In his evidence, the defendant did not dispute nor challenge the contents of the loan statement. On his part, the defendant produced an Mpesa statement and another hand written document to show how much he had paid. I will disregard the hand written document since it does not suffice as proof of payment. The Mpesa statement does not show at the beginning, the account holder's name and phone number. However, a perusal of the same leaves no doubt that the account holder was the defendant herein. I say so because there are entries which show that deposits were made form Mpesa agencies, to a phone number registered in the name of the defendant. It could only mean that the statement was in respect of that particular phone number.

28. The Mpesa statement contains entries of money sent to the plaintiff on several occasions. The statement was not disputed by the plaintiff. In other words, the plaintiff did not in any way deny having received the money indicated in the Mpesa statement. In fact, counsel for the plaintiff did not cross-examine the defendant on the contents of the Mpesa statement. In the same breath, the defendant did not allege that the payments he had made had not been reflected in the loan statement produced by the plaintiff. Both parties appear to have assumed, erroneously so in my view, that the court would play Auditor of their accounts. However, what stands out in the loan statement is that the defendant had a loan balance of Ksh. 1,960,376.88/= as at 22/9/2016. This is the amount being claimed by the plaintiff in its plaint.

29. My opinion is that the loan statement is prima facie evidence of what the defendant owed the plaintiff. This evidence can only be rebutted by contrary evidence by the defendant. As already indicated, the defendant did not challenge the contents of the loan statement. He did not adduce contrary evidence. There is sufficient material on record to show that the repossessed motor vehicle was sold at Ksh. 3,000,000/=. This is indicated in the Auctioneer's report dated 7/9/2016 and produced in evidence. The plaintiff also produced in evidence a copy of a bank statement for an account jointly held by the defendant and his wife. The statement indicates that Ksh. 3,000,000/= was credited to the account on 14/9/2016. This was after the auction on 2/9/2016. In view of the foregoing, I find that the plaintiff has proven on a balance of probabilities that the defendant owes it Ksh. 1,960,376.88/=.

The Counter-claim

30. The defendant alleged that the repossession of the motor vehicle was unlawful as he was not given prior notice. On the other hand, the plaintiff relies on the Chattels mortgage agreement which provides that in default of payment by the defendant, the plaintiff was entitled to repossess the motor vehicle without notice nor consent of the defendant. Indeed, that is what the agreement provides. I have already stated that the defendant did not dispute the existence of the loan agreement and he admitted having signed the agreement, although the relevant page is missing. The conduct of the parties signified that they intended to be bound by the terms of the loan agreement.

31 The plaintiff relied on the authorities of Amicabre Travel Services Limited v Alios Kenya Finance Limited [2014] KEHC 4671 (KLR) and Co-operative Bank of Kenya Limited v Amasi (Suing as the Administratratix of the Estate of Dorcas Amasi Mwima) [2024] KEHC 12691 (KLR), wherein the courts upheld clauses in the agreements that allowed lenders to repossess securities without notice. The authority of Barasa v Momentum Credit Limited [2025] KEHC 5233 (KLR) relied upon by the defendant does not assist his case. The circumstances in that authority were different. The defendant was aware that he was in default and even after the motor vehicle was repossessed, he did not take any steps to redeem it or stop the plaintiff from selling the motor vehicle. He had to wait to be sued so as to put up a counter-claim. It appears to me that the counter-claim was an afterthought. My finding is that the repossession of the motor vehicle was lawful.

32. I agree with the plaintiff that there is no requirement for the defendant to have been involved in the sale of the repossessed motor vehicle. In my view, any irregularity in the conduct of the sale/auction does not vitiate the plaintiff's right to repossession. In any event, the defendant did not challenge the auction at all. The defendant did not even allege that the motor vehicle was sold at a price that was too low. He did not seek valuation of the motor vehicle by an independent Valuer pursuant to rule 10 of the Auctioneers Rules. In his counter-claim, the defendant alleged that there was non-disclosure of true accounts of the loan amount and repayments made. He prayed for an order of true accounts and refund of the surplus amount paid by himself.

33. The defendant did not state what he believed was the total loan amount. The bank and loan account statements were served upon the defendant together with the plaint. The defendant did not interrogate the statements when the plaintiff's witness attended court. He did not point out what the surplus amount was. I hope the defendant did not expect the court to do the audit for him and come up with the surplus, if any. It was incumbent upon the defendant to prove that the repayments, taken together with the proceeds from the sale of the motor vehicle, were in excess of the loan amount. It is not the duty of the court to look for such evidence. The defendant ought to have furnished and pointed out such evidence to court.

34. It is not known which other evidence the defendant expected apart from the account and loan statements. The statements show how much was received from the defendant and how much was owing. If the defendant believed that the books of accounts produced in evidence by the plaintiff were false, he ought to have adduced evidence to that effect. I repeat that it is not the duty of the court to assist the defendant in proving his case. There is no evidence to show that the plaintiff received more than what was due to it on account of the loan. The defendant alleged that the plaintiff took his stock and water tanks. That the items were worth Ksh. 169,000/=. This particular issue was not pleaded in the defence and counter-claim. Furthermore, no sufficient evidence was adduced to prove the allegations. It is not known when the items were allegedly taken and in whose presence. I find that the counter-claim is devoid of merit.

Disposition

35. Having made the above considerations, I proceed to make the following orders:

    a. Judgment is hereby entered for the plaintiff against the defendant in the sum of Ksh. 1,960,376.88/=;

    b. The defendant's counter-claim is hereby dismissed;

    c. The plaintiff is awarded costs of the suit and counter-claim.

36. The guiding principles in respect of interest are set out in section 26 of the *Civil Procedure Act* which provides that:

> "(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
>
> (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum."

37. In the case of Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR, the court stated that:

> "First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd [1988] KLR 380.
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> Second, Under Section 26(1) of the *Civil Procedure Act*, the Court has discretion to award and fix the rate of interests to cover two stages namely:

a. The period from the date the suit is filed to the date when the Court gives its judgment; and

b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix."

38. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of Omunyokol Akol Johnson v Attorney General (Civil Appeal No.6 of 2012, UGSC 4 (8th April 2015) stated in part, as follows:

> " It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment." (Emphasis supplied)

39. From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on a liquidated claim should be with effect from the date of filing suit till the date of judgment. Consequently, interest on the award shall accrue at court rates from the date of filing suit to the date of judgment/decree.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 10TH DAY OF MARCH, 2026.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.